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Maria Enrichetta Melzi Cargnani

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIA ENRICHETTA MELZI CARGNANI,

Petitioner,

vs.

PEWAG AUSTRIA G.m.b.H., PEWAG
WEISSENFELS HOLDING A.G., PEWAG
WEISSENFELS INTERNATIONAL G.m.b.H.,
and AGYD PENGGE, an individual,

Respondents.

No.: 2:05-CV-00133-WBS-JFM

**STATUS REPORT AND REQUEST FOR
CONTINUANCE OF STATUS
CONFERENCE; [PROPOSED] ORDER**

Date: October 11, 2005

Time: 9:00 a.m.

Courtroom: 5

The Honorable William B. Shubb

Pursuant to Local Rule 16-240 and the Court's Order Setting Status (Pre-Trial Scheduling) Conference, Petitioner Maria Enrichetta Melzi Cargnani ("Petitioner") hereby submits the following Status Report and Request for Continuance of Status Conference:

A. Summary of Claims

On or about September 17, 2003, Petitioner obtained an arbitration award in her favor and against Respondents Pewag Austria G.m.b.H. ("Pewag Austria"), Pewag Weissenfels Holding A.G. ("Pewag Holding"), Pewag Weissenfels International G.m.b.H. ("Pewag International") and Agyd

Pengg (“Pengg”)(collectively “Respondents”) in Trieste, Italy. The arbitration award provides that Respondents shall pay to Petitioner the sum of 7,331,530.00 Euro plus interest from April 30, 2002 until payment. The arbitration award further provides that Pewag Austria, Pewag International and Pengg shall pay to Petitioner the sum of 1,917,488.08 Euro plus interest from October 10, 2002 until payment. Respondents are also required to pay the costs and fees for the arbitration as set forth in the award. To date, Respondents have failed and refused to pay Petitioner the amount she is owed under the arbitration award. As a result, Petitioner filed this Petition to Enforce Foreign Arbitral Award.

B. Status of Service

Respondents are Austrian corporations and an individual who resides in Austria. Because Austria is not a signatory to the Hague Convention, Petitioner must serve Respondents through the process of Letters Rogatory. This process requires the assistance of the Austrian government.

After filing the Petition, Petitioner began the service process by having Letters Rogatory prepared with a translation of the Petition and all papers issued by this Court. On March 16, 2005, Petitioner filed with this Court Letters Rogatory for service upon Respondents Pewag Austria, Pewag International and Pengg. Thereafter, this Court issued the Requests for International Judicial Assistance to the Judicial Authority in Austria. As noted, Austria is not a signatory to the Hague Convention and, therefore, Petitioner must effect service with the assistance of the Austrian government. The timing for completion of the process is within the discretion of that government.

Given the complexity of this process, additional time is required to complete the service process. Petitioner anticipates that service upon Respondents will take at least an additional six months. Fed. R. Civ. P. 4(m); *See also Lucas v. Natoli*, 936 F.2d 432, 433 (9th Cir. 1991)(holding requirement in Fed. R. Civ. P. 4 that service be effected within 120 days does not apply to service in a foreign country).

C. Possible Joinder of Additional Parties

Petitioner does not anticipate joining any additional parties at this time.

D. Contemplated Amendments to the Pleadings

Petitioner does not anticipate joining any additional parties at this time.

E. Statutory Bases for Jurisdiction

Petitioner brings this action pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 201 et seq. This Court has subject matter jurisdiction pursuant to 9 U.S.C. § 203.

F. Discovery Plan/Discovery Cut-Off

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(E)(viii) and Local Rule 16-240(c), Petitioner is exempt from the requirement of submitting a discovery plan because this action involves a petition to enforce arbitration award.

G. Request for Continuance/Other Issues

Petitioner respectfully requests the Court continue the Status Conference currently scheduled for October 11, 2005, to April 10, 2006, given that she must serve Respondents through the Letters Rogatory process. Petitioner anticipates that completion of the service process will take at least

1 another six months. Once service is complete, the Court and all parties will be in a position to
2 evaluate a timeline for resolution of this action.

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4 DATED: September ___, 2005.

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6 REED SMITH LLP

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8 By _____

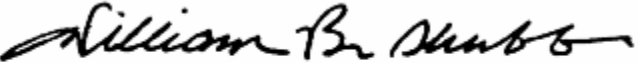
9 Karen A. Braje
10 Attorneys for Petitioner
11 Maria Enrichetta Melzi Cargnani

12 **ORDER**

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14 In light of Petitioner's continued effort to effect service using the Letters Rogatory process,
15 this Court continues the Status Conference currently scheduled for October 11, 2005, at 9:00 a.m. to
16 April 10, 2006, at 9:00 a.m. in Department 5 of this Court.

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18 IT IS SO ORDERED.

19 DATED: September 26, 2005

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22 WILLIAM B. SHUBB
23 UNITED STATES DISTRICT JUDGE
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